In the High Court of Uttaranchal, at

Nainital.

A.O. No. 1066/2001

(Old No. 844/1983)

The New India Assurance Company Ltd.
Dehradun ... Appellant.

Vs.

1- Smt. Chand Bibi W/o late Maksood Khan R/o Muslim, Tehri Garhwal.
2- Habib Khan S/o Mohammad Khan, Manager of Truck No. UTS 20, R/o Muslim Mohalla, Tehri Garhwal.
3- Kameshwar Prasad S/o Amar Dev R/o Village Khala Patti Kumar, Tehri Garhwal.
4- Shyam Chand, driver of above truck, R/o Village Sunor Jain, Patti Gusain, Tehri Garhwal ... Respondents.

Sri T.A.Khan, learned counsel for the appellant.
Sri H.S. Rawal, holding brief for Sri R. Kotiyal, learned counsel for the respondents/claimants.

Hon'ble B.C. Kandpal, J.

This appeal, U/S 110-D of the Motor Vehicles Act, 1939, has been preferred against the judgment and award dated 30-9-1983, passed by Motor Accident Claim Tribunal, Tehri Garhwal, in MACP No. 12/1982 Smt. Chand Bibi Vs. Habib Khan and others.

2- Brief facts of the case are that Maksood Khan who was working as a conductor on Truck No. UTS 20, belonging to respondents 2 and 3 Vidya Dutt and Kameshwar Prasad respectively and respondent No.1 Habib Khan was the Manager of the truck and respondent No.4 was the insurer of the truck. Respondent No.5 was the driver of the offending truck. On 23-12-1981 at about 10 A.M. the truck was being

driven from Dehradun to Tehri and the deceased Maksood Khan and Habib Khan were sitting in it. At Chamba they also picked up Tahir Beg. Suddenly the brakes of the truck failed and stopped working and it dashed against the rock, due to which the occupants of the truck overturned and Maksood Khan was crushed beneath it, who died at the spot. The claimant filed the claim petition in lieu of death of Maksood Khan. It was alleged that the deceased was getting Rs. 450/- per month as salary and he used to give Rs. 300/- per month to the petitioner. The petitioner claimed compensation of Rs. 1,00,000/-.

3- The respondents owners and the driver of the offending truck contested the claim petition by filing joint W.S. and alleged that the truck collided with the hill side. The deceased opened the window of the truck and was standing on the foot-boar. When the truck overturned Maksood Khan came beneath the truck and was crushed to death. They also alleged that the deceased was getting Rs. 290/- per month and not Rs. 450/- as claimed by the petitioner. It was also alleged that the petitioner has been working as a teacher in a government school drawing about Rs. 500/- per month as emoluments and she was neither dependent of Maksood Khan nor her children were dependent upon the deceased. The rash and negligence of the driver has been denied.

4- The appellant/insurer of the offending truck also contested the case and alleged that the accident occurred due to sudden failure of the brakes and not due to any negligence of the driver. It was also alleged that the liability of the insurance company was limited to Rs. 50,000/- only.

5- On the basis of pleadings of the parties, the learned Tribunal framed the following issues:-

1- Whether the accident took place due to rash and negligent driving of truck by O.P. No.5?.
2- Whether the O.P. No. 1 has been unnecessarily impleaded?.
3- To what compensation, if any and from which of the O.Ps. are the commandants entitled?.

6- The parties in support of their cases produced the evidence before the Tribunal concerned and the Tribunal after hearing the learned counsel for the parties and having perused the entire material available on record, decreed the claim petition of the claimant/respondent No.1 for a sum of Rs. 61,920/- vide impugned judgment and award dated 30-9-1983.

7- Feeling aggrieved by the aforesaid judgment and award, the insurer of the offending truck has filed the appeal before the Allahabad High Court, which has been transferred to this court for final disposal, after creation of the State.

8- Heard learned counsel for the parties and perused the record.

9- The finding of the Motor Accident Claim Tribunal with regard to the rash and negligence as well as the quantum of compensation appears to be absolutely justified. The Tribunal has recorded its finding after sound assessment of the evidence on record.

10- The only point which has been emphasized by the learned counsel for the appellant before me is that the maximum liability of the insurance company for paying the amount of compensation was up to the extent of Rs. 50,000/- only. My attention has been invited upon paper No. 22-C available in the file of the court below. This document is the insurance policy of the offending truck in question and it indicates that the amount of the company's liability was up to an extent of Rs. 50,000/- in one event. The insurance company has also taken this plea in their W.S., which was filed by the insurer of the offending vehicle before the claim Tribunal.

11- The document, therefore, clearly suggests that the liability of the Insurance Company to pay the compensation was up-to the extent of Rs. 50,000/- only.

12- However the impugned judgment and award passed by the court below also indicates that the Tribunal has held that the claimant is entitled to recovery for an amount of Rs. 61,920/- by way of compensation from all the respondents, but the Tribunal in this judgment has not specified the amount of compensation to be paid by the insurance company. Therefore, in order to clear the confusion, I clarify the impugned judgment and award, as follows:-

The insurer of the vehicle/appellant is liable to pay an amount upto an extent of Rs. 50,000/- and rest of the amount of the award would be paid to the claimant/respondent No.1 by the respondent No.2 Habib Khan, who is the owner/Manager of the offending truck in question.

13- The respondent No.2 and appellant shall also pay the interest @ Rs. 6% per annum from the date of filing the petition, till the date of actual payment in proportionate manner.

14- With these observations the appeal is partly allowed and the impugned judgment and award is modified up to the extent as observed above in the body of the judgment.

15- In case if the appellant has paid the entire amount to the claimant/respondent No.1, then the appellant shall have a right to recover the excess amount from the owner of the truck.

(B.C. Kandpal, J.)

Dated: 21-09-2006
ISB